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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation November 2, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10782--12

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Delta Air Lines, Inc. filed 10/4/01 and supplemented 11/1/01 for:

XX Temporary Allocation of Unused Frequencies in U.S.-Brazil market:¹

Delta requests a temporary allocation of four (4) unused U.S.-Brazil combination frequencies for services in the Atlanta-Rio de Janeiro market. Delta states that numerous U.S.-Brazil frequencies are currently unused because carriers have suspended services in the aftermath of the events of September 11. Delta states that the additional allocation, in conjunction with its existing three flights, will enable Delta to operate a full pattern of daily Atlanta-Rio de Janeiro nonstop service. Delta further states that it plans to begin the additional Atlanta-Rio de Janeiro service on December 1, 2001, with such service to continue at least through March 31, 2002, subject to recall on no less than 90 days' notice. Delta seeks immediate action on its application so that it can begin selling the proposed services.

The Georgia and Atlanta Parties, American, Continental and United filed answers to Delta's application and Delta filed a consolidated reply. The Georgia and Atlanta Parties support Delta's application, and American, Continental, and United, while not opposing a temporary allocation to Delta, argue against any action that would interfere with their respective plans of service for the summer 2002 season.

On October 26, 2001, Delta, American, Continental and United submitted a joint letter, stating that American, Continental, and United would not oppose grant of Delta's application for temporary allocation of the frequencies through March 31, 2002, and thereafter, subject to recall no sooner than 90 days after the carrier proposing to reinstitute U.S.-Brazil service using the last four dormant frequencies gives written notice to the Department and Delta of intent to use the frequencies. They also state that if any U.S.-Brazil frequencies are withdrawn for dormancy, any carrier may seek permanent allocation of those frequencies at the appropriate time.²

(See Reverse Side)

¹ Delta also filed a motion to shorten the answer period to the application, which was contested by the other parties. The normal answer period has now run. We, therefore, dismiss the motion as moot.

² They also state that Delta will not oppose grant of blanket temporary waivers with respect to dormant international services as requested by United, American, Northwest, Continental, and other airlines, under which the 90-day dormancy provision would begin to run on March 31, 2002, and terminate on June 30, 2002, with Delta's blanket waiver having the same duration. (See Dockets OST-2001-10699/10750/10769/10781/10808.) We will rule on the issue of blanket dormancy waivers separately.

Subsequently, on November 1, 2001, Delta, American, Continental and United filed a second joint letter in which the four carriers urge the Department to take two related immediate actions with respect to pending Brazil frequency allocation and dormancy waiver issues. The four carriers urge the Department to allocate to Delta the requested four U.S.-Brazil frequencies for Atlanta-Rio de Janeiro service through March 31, 2002, subject to recall on not less than 90 days' notice to the Department and Delta. They also request a simultaneous award to United, Continental and American of dormancy waivers with respect to their U.S.-Brazil authority through March 31, 2002. The four carriers state that these related requests are without prejudice to the position taken by the carriers in the pending dormancy waiver proceedings for blanket relief through June 30, 2002. (See, Dockets OST-2001-10699/10750/10769/10781/10808)

Applicant rep.: **Robert E. Cohn/Alexander Van der Bellen (202) 663-8060**
 DOT analyst: **Linda Senese (202) 366-2367**

DISPOSITION

XX **Granted, in part (through March 31, 2002), subject to conditions (see below)**
XX **Balance (for allocation beyond March 31, 2002) deferred.**

The above action allocating frequencies was effective when taken: **November 2, 2001**, through **March 31, 2002**

The above deferral action was effective when taken: **November 2, 2001**

XX **Action taken by: Paul L. Gretch, Director**
Office of International Aviation

Conditions: The frequency allocation granted is subject to the condition that any of the allocated frequencies is subject to recall on 90 days' written notice to the Department and Delta that the original holder of the frequencies intends to resume service with the frequency(ies).³

In a separate action, we have concurrently granted the pending requests of American, Continental and United for dormancy waivers with respect to U.S.-Brazil authority through March 31, 2002. (See Notice of Action Taken, Dockets OST-2001-10699, 10769, and 10771) We have deferred action on the balance of the named carriers' requests in the cited dockets for a blanket dormancy waiver for all of their limited-entry international services.

Under the authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the application was consistent with the public interest. To the extent not granted, deferred, or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

³ In the circumstances presented and given the short duration of the award here, we have decided not to subject Delta's temporary award here to our standard 90-day dormancy condition.